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NO. 91-1129

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RONALD DEE BECK,
Petitioner,

vs.

LILLIAN M. BECK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE

SUPREME COURT OF TEXAS

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QUESTIONS PRESENTED

1. Does the 1980 Amendment to Article XVI, § 15 of the Texas Constitution, as construed by the Supreme Court of Texas, deprive Petitioner of his community property interest in Respondent's earnings during the marriage without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution?

2. Does the 1980 Amendment to Article XVI §15 of the Texas Constitution, as construed by the Texas Supreme Court, constitute an impairment of Petitioner's vested contract rights to the community property in question in violation of Article I, §10 of the United States Constitution?

3. Did the Supreme Court of Texas encroach upon the law-making function of the Texas legislature in violation of

Article III, §§ 1 and 2 of the United States Constitution by applying the 1980 Amendment to Article XVI, §15 of the Texas Constitution retroactively?

4. Did the Supreme Court of Texas encroach upon the law-making function of the Texas legislature in violation of Article VI, cl. 2 of the United States Constitution by making the 1980 Amendment to Article XVI, §15 of the Texas Constitution retroactive?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	iii
Table of Authorities	iv
Opinions Below	2
Jurisdiction	2
Constitutional and Statutory Provisions Involved	3
Statement of the Case	3
Reasons for Granting the Writ	11
1. Due Process -	11
2. Impairment of Vested Rights	22
3. Doctrine of Implied Validation	31
4. Judicial Activism	34
Conclusion	40
Appendix A (1948 Constitutional Amendment)	
Appendix B (1980 Constitutional Amendment)	

TABLE OF AUTHORITIES

CASES

NAME	*PAGE*
American Federation of Labor v. American Sash and Door Co., 335 U.S. 538, 93 L Ed 222, 69 S.Ct. 258 (1949)	32
American Trucking Assn. v. Smith, 495 U.S. ___, 110 L.Ed. 2d. 148, 110 S.Ct. ___ (1990)	31, 35
Arnold v. Leonard, 273 S.W.799 (Tex. 1925)	24
Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 74 L.Ed. 1107, 50 S.Ct. 451 (1930)	11, 12
Burton v. Bell, 380 S.W.2d 560 (Tex. 1964)	10
City of San Antonio v. San Antonio Public Service Co., 255 U.S. 547, 65 L Ed 777, 41 S.Ct. 428 (1921)	33
Cox v. Schweiker, 684 F.2d 310 (5th Cir. 1982)	29
Estate of Griffin v. Sumner, 604 S.W.2d 221 (Tex. Civ. App.- San Antonio 1980, writ ref'd n.r.e.)	15
Fleming v. Fleming, 264 U.S. 29, 68 L.Ed. 547, 44 S.Ct. 246 (1924)	29

Florida v. Wells, 495 U.S. __, 109 L Ed 2d 1, 110 S.Ct. 1632 (1990) 35

Golden v. People ex. rel. Baker, 101 Colo. 381, 74 P.2d 715, 716 (Colo. 1937) 34

Gorman v. Gouse, 56 S.W.2d 855 (Tex. Comm'm App. 1933, judgment adopted) 24

Green v. Ferguson, 62 Tex. 525 (1884) 24

Hilley v. Hilley, 342 S.W.2d 565 (Tex. 1961) 10

Hockley County Seed & Delinting Co. v. Southwestern Inc., Co., 476 SW2d 38 (Civ. App. - Amarillo 1971, writ ref'd, n.r.e. at 516 SW2d 136) 16

Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 78 L.Ed. 413, 54 S.Ct. 231 (1934) 15

Hopkins v. Bacon, 282 U.S. 121, 75 L. Ed. 249, 51 S.Ct. 62 (1930) . 25-28

Kellet v. Trice, 66 S.W.51 (Tex. 1902) 24

Lange v. Schulte, 276 S.W.2d 889, (Tex. Civ. App.-Amarillo 1954, writ ref'd n.r.e.) 15

Lenhard v. Butler, 745 S.W.2d 101 (Tex. App.-Fort Worth 1988, no writ.) 38

Marbury v. Madison, 1 Cranch 137, 2 L Ed 60 (1803) 35

Matthews v. Quinton, 362 P.2d 932, 938-39 (Alaska 1961) 34

Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 66 L.Ed. 659, 101 S.Ct. 715 (1981) . . . 39

Missouri v. Hunter, 459 U.S. 359, 74 L.Ed. 535, 103 S.Ct. 673 (1983) . 19

Paluck v. Board of County Commissioners, 307 N.W.2d 853, 855 (N.D. 1981) 34

Shareholders of the Hagerstown Bank & Trust Co. v. Sterling, 300 U.S. 175, 81 L.Ed. 586, 57 S.Ct 386 (1937) 29, 30

State v. Humble Oil & Refining Co., 169 SW2d 707 (Tex. 1943) 16

Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed. 2d 1311, 77 S.Ct. 1203 (1957) 39

Texas Court of Appeals opinion, Dallas Division, is reported at 792 S.W.2d 813 (Tex. Civ. App.-Dallas, 1990.) 2

Texas Supreme Court opinion is reported at 814 S.W.2d 745 (Tex. 1991) 2

Tidal Oil v. Flanagan, 263 U.S. 444, 68 L.Ed. 382, 44 S.Ct. 197, (1924) . 29

U.S. v. Donelly's Estate, 387 U.S. 286, 25 L Ed 2d 312, 90 S.Ct. 1033 (1970) 33

United States v. Locke, 471 U.S. 84, 85 L Ed 2d 64, 107 S.Ct. 1785 (1985) 36

United States v. Sisson, 399 U.S. 267, 26 L.Ed.2d 608, 90 S.Ct. 2117 (1970) 31, 36

United States v. Yoshida International, 526 F.2d 560 (1975) . 38

Wessley Energy Corporation v. Jennings, 736 S.W.2d 624 (Tex. 1987) 15

Williams v. Williams, 569 S.W.2d 867 (Tex. 1978) 8, 10, 15

CONSTITUTION AND STATUTES

NAME	*PAGE*
28 U.S.C.A. §1257	2
1948 Amendment to Article XVI, Section 15 of the Texas Constitution	6, 9, 46
1980 Amendment to Article XVI, Section 15 of the Texas Constitution	10, 20, 32, 37, 39, 48
Article 1, Section 10, U.S. Constitution	3
Article 3, Section 1, U.S. Constitution	3, 35
Article 6, Clause 2, U.S. Constitution	3
Article XVI, Section 15, Texas Constitution	3
Fifth Amendment to the U.S. Constitution	3, 11
Fourteenth Amendment to the U.S. Constitution	3, 11, 12, 14
Section 311.022 of the Government Code (Vernon's 1988)	16
§5.41 of the Texas Family Code	4

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PETITION FOR A WRIT OF CERTIORARI

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Petitioner, Ronald Dee Beck, prays that a writ of certiorari issue to review the judgment of the Texas Supreme Court entered May 30, 1991, affirming a partial summary judgment rendered against him in

the trial court and affirmed by the Texas Court of Appeals, Dallas Division, and that on hearing the partial summary judgment against him be reversed.

OPINIONS BELOW

The opinion of the Texas Supreme Court is reported at 814 S.W.2d 745 (Tex. 1991).

The opinion of the Texas Court of Appeals, Dallas Division, is reported at 792 S.W.2d 813 (Tex. Civ. App.-Dallas, 1990.)

JURISDICTION

The judgment of the Texas Supreme Court was entered on May 30, 1991. Timely motion for rehearing was filed, and was denied on September 11, 1991. This Court has jurisdiction under 28 U.S.C.A. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 10, U.S. Constitution

Article 3, Section 1, U.S. Constitution

Article 3, Section 2, U.S. Constitution

Article 6, Clause 2, U.S. Constitution

5th Amendment, U.S. Constitution

14th Amendment, U.S. Constitution

Article XVI, Section 15, Texas Constitution

Section 5.41 of the Texas Family Code

STATEMENT OF THE CASE

Petitioner, Ronald Dee Beck, individually and as Independent Executor of the Estate of Audrian L. Beck, deceased, brought suit against his stepmother, Lillian M. Beck, Respondent, for an accounting and to recover one-half of the earnings and income from Respondent's separate property during her

marriage to Petitioner's father, Audrian L. Beck. In his suit, Petitioner further sought a judgment declaring paragraph four of an antenuptial agreement between respondent and Audrian L. Beck as being violative of Article XVI, §15 of the Texas Constitution and §5.41 of the Texas Family Code, as written at the time of the execution of the agreement in 1977.

Paragraph four of the antenuptial agreement provides:

> "Notwithstanding that under the laws of the State of Texas the income from respective separate properties of Audrian and Lillian will be community property, they hereby agree that all the properties of every kind and nature, real and personal, held or standing in the name of only one of them shall be considered as a separate property of the one of them in whose name such property is held or stands, and that only properties, whether real or personal, held or standing in their joint names shall be considered community property."

The trial court granted two separate partial summary judgments in favor of Respondent. The first held that paragraph four of the prenuptial agreement was valid and enforceable. The second held that Petitioner's claims for an accounting and recovery of one-half of the earnings and income from Respondent's separate property were barred by the applicable two-year statute of limitations. The summary judgment issues were severed and from those issues Petitioner perfected this appeal.

The Texas Court of Appeals, Dallas Division, affirmed the summary judgment of the trial court declaring paragraph four of the antenuptial agreement valid and enforceable. The Texas Supreme Court granted a writ of error and affirmed the holding of the Court of Appeals.

In its affirmance, the Texas Supreme

Court rejected the basis relied upon by the Texas Court of Appeals and acknowledged that the prenuptial agreement in question was unenforceable under the 1948 Amendment to Article XVI, Section 15 of the Texas Constitution (App. A, infra) and would be void unless the 1980 Constitutional Amendment thereto (App. B, infra) could be given retroactive effect. The Texas Supreme Court further acknowledged that the language of the 1980 Constitutional Amendment was silent on its face concerning any legislative intent to validate unenforceable prenuptial agreements under the 1948 constitutional amendment and that no invalid law or contract had ever been validated in Texas in the absence of express language in a subsequent statute or constitutional amendment clearly expressing the legislature's intent to that effect. To

circumvent these legal impediments to its desired objectives in promulgating public policy, the Texas Supreme Court embarked upon a radical departure from existing public policy consistently followed by the Texas legislature by adopting the doctrine of "implied validation". Under the auspices of the authority so created, the Texas Supreme Court judicially imputed legislative intent to grant retroactive effect to the 1980 Constitutional Amendment.

The Texas Supreme Court based its determination that the legislature intended to make the constitutional amendment retroactive upon the following: (1) a one sentence comment non-specific on the topic of validation excerpted from the testimony of an unidentified witness at a public hearing before the House Committee on Constitutional Amendments on February

28, 1979; (2) other non-specific testimony from unidentified witnesses during a public hearing and floor debate in the Texas House of Representatives on April 10, 1979; and (3) the court's conclusion, based on no cited evidence or authorities, that the adoption of the 1980 amendment was reactionary to the 1978 Williams case, infra, and the 1980 reversal of a United States Tax Court decision by a Federal Court of Appeals.

The reasoning of the Texas Supreme Court, eclectic as it is, may best be described as a three-step analysis which allowed that Court to tailor the law to the result they desired in this case.

First, the Texas Supreme Court had to determine whether the agreement between Lillian and Audrian Beck was void or voidable. Under fundamental principles of contract law, void agreements may never be

resuscitated, while voidable contracts can be ratified by the parties. Thus, the Texas Supreme Court first found the agreement voidable and subject to ratification.

Second, after determining that the agreement was subject to ratification, the Texas Supreme Court proceeded to validate the contract. To do so, that Court adopted the doctrine of implied validation, allowing retroactive application of the 1980 Constitutional Amendment. Without the implied validation doctrine, the agreement in question would have been void because it was written while the 1948 Amendment was in effect. The 1948 Constitutional Amendment, as consistently construed by the Supreme

Court of Texas[1], prohibited prenuptial agreements purporting to prospectively characterize marital property contrary to the provisions of the Texas Constitution. Such agreements were "void."

Finally, the Texas Supreme Court recognized that the resurrected contract would be short-lived if retroactive application of the 1980 Amendment violated vested contract rights held by parties to the contract. Therefore, by going back to the first step of the analysis, the Court held that because the contract was not void but voidable and subject to ratification, Petitioner's contract rights never vested in the first place. By this circuitous reasoning the Texas Supreme

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[1]See, Hilley v. Hilley, 342 S.W.2d 565 (Tex. 1961); Burton v. Bell, 380 S.W.2d 560 (Tex. 1964); and Williams v. Williams, 569 S.
W.2d 867 (Tex. 1978).

Court held that the 1977 agreement was valid and enforceable against Petitioner, despite the fact that under Texas law in 1977, such an agreement would have otherwise been void.

Petitioner seeks review of the affirmance of summary judgment below, and outright reversal of such judgment against him.

REASONS FOR GRANTING THE WRIT

1. It has long been held by this Court and in American jurisprudence that a court, through judicial opinion, may violate due process rights held and protected under the Fifth and Fourteenth Amendments to the U.S. Constitution. Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 74 L.Ed. 1107, 50 S.Ct. 451 (1930). In Hill, this Court held

that a state supreme court may, through judicial opinion and judgment, deprive a party of due process in the same manner as a legislative, executive, or administrative body.

Hill stemmed from a Missouri suit which sought to enjoin the collection of taxes on the full value of shares of stock in a bank. Normally, all classes of property which had been assessed the tax were taxed at 75% of their market value. Plaintiffs paid the taxes based on a full market value assessment and sued, claiming the additional 25% assessment was void as a discrimination prohibited under the Equal Protection clause to the Fourteenth Amendment.

In the State of Missouri, there was an administrative body which would have heard the plaintiffs' case but for a Missouri Supreme Court decision which

precluded that body from hearing it. Because of the judicial decision, plaintiffs were forced to file a bill in equity. The trial court denied the bill. On appeal the Missouri Supreme Court overruled the prior case which had forced the plaintiffs to file in equity in the first place. The Missouri Supreme Court held that the State Tax Commission had the power to hear appeals such as plaintiffs' and if the evidence before that board had been favorable, it would have had the power to adjust the assessment rate pursuant to plaintiffs' claim. However, because the time for appeal to that board had expired, the Missouri Supreme Court held that Plaintiffs were precluded from presenting their claim to the Commission because laches acted as a bar to their claim.

In their motion for rehearing to the Missouri Supreme Court, plaintiffs asserted constitutional claims similar to those raised in the case at bar. They argued that the Missouri Supreme Court, because it had denied plaintiffs the right to be heard by the State Tax Commission because of laches, had violated plaintiffs due process rights under the Fourteenth Amendment.

The plaintiffs' motion for rehearing was denied, and they appealed to the United States Supreme Court. This Court held that (1) due process violations may result from judicial decisions as well as legislative enactments; and (2) a judicial body may deprive a party of due process while construing an otherwise valid state statute.

In the case at bar, the Texas Supreme Court overruled[2] prior case law which existed at the time the antenuptial contract was made and which was a part of the contract and governed the transaction. Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 78 L.Ed. 413, 54 S.Ct. 231 (1934), Wessley Energy Corporation v. Jennings, 736 S.W.2d 624 (Tex. 1987), Lange v. Schulte, 276 S.W.2d 889, (Tex. Civ. App.-Amarillo 1954, writ ref'd n.r.e.), Estate of Griffin v. Sumner, 604

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[2]While the Texas Supreme Court stated in its opinion that its decision did not have any effect on Williams v. Williams, 569 S.W.2d 867 (Tex. 1978), such statements are express departures from intellectual honesty. In Williams, the Texas Supreme Court expressly held that all antenuptial agreements which attempted to recharacterize marital property under the 1948 amendments were void when written. In Beck, the Texas Supreme Court, again construing a prenuptial agreement under the 1948 amendments which served to recharacterize marital property, held that such agreements were not void, effectively overruling Williams.

S.W.2d 221 (Tex. Civ. App.-San Antonio 1980, writ ref'd n.r.e.). This the Texas Supreme Court did in two ways. First, Texas courts had consistently followed the express validation doctrine. That is, that a law will not be applied retrospectively, even where there is no constitutional impediment against such application, unless it appears by fair implication from the language used therein that it was the intention of the legislature to make the law applicable to both past and future transactions. State v. Humble Oil & Refining Co., 169 SW2d 707 (Tex. 1943); Hockley County Seed & Delinting Co. v. Southwestern Inc., Co., 476 SW2d 38 (Civ. App. - Amarillo 1971, writ ref'd, n.r.e. at 516 SW2d 136). The express validation doctrine was also codified by the Texas legislature under Section 311.022 of the Government Code

(Vernon's 1988)[3]. In this case, the Texas Supreme Court purports to adopt the doctrine of implied validation as a "new" doctrine. By calling the doctrine "new", the Texas Supreme Court implies that it has no prohibiting precedents in Texas jurisprudence. That statement is not intellectually honest. Adoption of the doctrine of express validation necessarily required our appellate courts and the Texas legislature to determine how much proof should be required to support a finding that the legislature intended, or did not intend, a legislative act to be applied retroactively. Thus, in Texas, the quantum of proof had been decided and the doctrine of implied validation had been considered and consistently rejected

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[3]"A statute is presumed to be prospective in its operation unless expressly made retrospective" (Emphasis added).

by the Texas Supreme Court and the Texas legislature.

Second, at the time the Beck antenuptial contract was signed in 1977, it was well settled in Texas that contracts which purported to alter the character of separate property contrary to Article XVI, Section 15 of the Texas Constitution were "void", not voidable. According to the circuitous reasoning of the Texas Supreme Court, the antenuptial agreement was subject to ratification based upon the determination that it was a voidable, and not void, agreement. The court then based its determination that Petitioner's contract rights had not vested in the first place on its prior determination that the contract was voidable.

Both groups of prior case law overruled by the Texas Supreme Court

discussed above were essential to the holding of the Texas Supreme Court in this case to make the 1980 Constitutional Amendment retroactive. Because the doctrine of implied validation was raised by the Texas Supreme Court on its own volition and the Petitioner was denied a rehearing on the issues presented by that Court's decision, Petitioner's due process rights were violated by that judicial decision.

It should further be noted that this Court has deployed its review powers to hear cases where a state court decision interpreting matters of state law allegedly violates provisions of the U.S. Constitution. Missouri v. Hunter, 459 U.S. 359, 74 L.Ed. 535, 103 S.Ct. 673 (1983). Thus, through adherence to principles of stare decisis, a ruling by this Court on the issues presented by this Petition

would not in itself be an exercise in judicial activism.

Even if the 1980 Amendment to Article XVI, Section 15 of the Texas Constitution was made retroactive in a manner in line with constitutional standards, it could not have validated the Beck agreement. The Texas Supreme Court acknowledged that prior to adoption of the 1980 constitutional amendment, premarital agreements and marital property agreements executed during marriage which attempted to characterize earnings from a spouse's separate property during the marriage as that spouse's separate property, were prohibited under the Texas Constitution. The 1980 Amendment only partially removed that prohibition by permitting spouses, not persons about to marry, to validly enter into such agreements. Audrian and Lillian Beck were not married when their

agreement was signed. Consequently, it was void under the 1980 Constitutional Amendment. Audrian Beck owned 1/2 of his wife's earnings from her separate property during their marriage. Lillian Beck had a like interest in Audrian's earnings from his separate property during the marriage. The judicial interpretation of the 1980 Constitutional Amendment by the Texas Supreme Court deprived Audrian Beck of that property without due process of law.

It is evident from the carefully chosen language used by the legislature in the 1980 Constitutional Amendment that agreements between persons about to marry and agreements between persons who were already married were recognized, distinguished and treated differently in a deliberate manner. For example, the amendment expressly allowed partition and exchange agreements between persons about

to marry and spouses, but it expressly restricted agreements pertaining to the characterization of earnings from separate property during the marriage to agreements between spouses only. That is, the 1980 constitutional amendment did not permit persons about to marry to prospectively characterize earnings during the marriage contrary to the long-standing law which defined all property acquired as community property unless acquired by gift, devise or descent.

2. It is Petitioner's contention that the Texas Supreme Court's decision in this case resulted in an impairment of vested contractual rights held by Petitioner and persons in the same station all over the State of Texas. In this case two types of vested rights are constitutionally protected. First, Audrian Beck had a vested right in community property. Under

Texas law, that included earnings during the marriage from Respondent's separate property, and vice versa. Second, Audrian and Lillian Beck each had a vested right to disaffirm the unenforceable 1977 agreement. By making the agreement between Audrian and Lillian Beck voidable and subject to ratification where such a contract was clearly void, the Texas Supreme Court deprived Petitioner of property he would have obtained had the contract been declared a nullity as mandated by the law which prevailed at the time the contract was written and signed.

Prior to adoption of the 1948 Constitutional Amendment, pre- and post-marital property agreements were void. Notwithstanding this constitutional prohibition, a sufficient number of such contracts existed prior to 1948 to merit

the attention of the Texas Supreme Court.[4] For a period of some 32 years after adoption of the 1948 Amendment, the married citizens of this state had the right, subject to the restrictions of that amendment, to enter into marital property agreements. The limited "legalization" of marital property agreements in 1948 dramatically increased the use of this device by the citizens of this state. The number of pre-1980 marital property agreements in existence cannot be estimated with certainty. However, the decision of the Texas Supreme Court is not limited to the validation of prenuptial agreements executed between 1948 and 1980. It affects every marital property

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[4]See, Arnold v. Leonard, 273 S.W.799 (Tex. 1925); Gorman v. Gouse, 56 S.W.2d 855 (Tex. Comm'm App. 1933, judgment adopted); Green v. Ferguson, 62 Tex. 525 (1884); Kellet v. Trice, 66 S.W.51 (Tex. 1902).

agreement entered into by the citizens of this state at any time prior to 1980. Neither is the impact of the Texas Supreme Court decision in this case limited to marital property agreements. The doctrine of implied validation embraces a broad legal concept applicable to every contract governed by a constitutional amendment which is subsequently changed by the legislature. The impact of the decision by the Texas Supreme Court in this case is enormous and merits review by this Court.

In Hopkins v. Bacon, 282 U.S. 121, 75 L. Ed. 249, 51 S.Ct. 62 (1930), this Court considered Texas community property law and the rights that law conferred. It should be noted that while Hopkins was decided prior to the constitutional amendments of 1948 which prevail over the agreement in question, there is nothing in the pertinent case law or legislative

enactments which would suggest, prior to the Texas Supreme Court's ruling in this case, that interests in community property estates were anything but vested contractual rights held by parties to a marriage contract in Texas.

Hopkins involved community property tax returns filed by a husband and wife residing in Texas. In their separate returns, each declared one half of the community income as their separate income. The Commissioner of Internal Revenue asserted that the husband should have to declare all of the community income on his return. The crux of the issue was that the husband would have paid more in taxes if all the community income had been assigned to him rather than each spouse claiming a one half share of the community income. The taxpayers paid their taxes under protest and brought suit to recover the

excess. The District Court granted the taxpayers judgment and the Fifth Circuit affirmed the District Court. This Court heard the case on a Writ of Certiorari.

The issue, as framed by this Court, was whether a person has "rights" or "expectancies" in community property. This Court held that persons have vested rights (emphasis added) to community property, stating in part:

> "it remains only to say that the interest of a wife in community property in Texas is properly characterized as a present vested interest, equal and equivalent to that of her husband, and that one half of the community income is therefore the income of the wife. "

Hopkins, 282 U.S. 126-127, (emphasis added)

The holding of the Texas Supreme Court in this case that Petitioner did not

have a vested right to one-half of the earnings of Lillian Beck during the marriage is contrary to this Court's holding in Hopkins, supra. Ronald Beck, as the beneficiary of Audrian Beck, stands in Audrian's shoes as a party to the agreement, and has been denied his vested rights under the contract in question by the Texas Supreme Court's decision in this case.

Even assuming for purposes of argument that the Texas legislature did in fact intend for the Constitutional amendments at issue to be applied retroactively, such an enactment would serve as a direct impairment of vested contract rights held by Petitioner and others whose property rights are violated by an agreement which is void when written. Legislative enactments which divest persons of vested rights have long

been viewed suspiciously by federal courts. Cox v. Schweiker, 684 F.2d 310 (5th Cir. 1982) (interpreting provisions of the Georgia Constitution.) Because the enactment has been interpreted as divesting Petitioner and parties like him of rights protected under the contracts clause, such legislation merits review by this Court.

Petitioner is aware of holdings by this Court which state that a court, acting independently, may not impair contract rights which are protected by the U.S. Constitution. Shareholders of the Hagerstown Bank & Trust Co. v. Sterling, 300 U.S. 175, 81 L.Ed. 586, 57 S.Ct 386 (1937), Tidal Oil v. Flanagan, 263 U.S. 444, 68 L.Ed. 382, 44 S.Ct. 197, (1924); Fleming v. Fleming, 264 U.S. 29, 68 L.Ed. 547, 44 S.Ct. 246 (1924). However, the Texas Supreme Court's decision below does

not, on its face or otherwise, rest on the independent judgment of that Court but is rather a somewhat garbled attempt at statutory construction. If the Texas Supreme Court had not attempted in any way, shape or form, to construe the constitutional amendments in question, but had, on its own volition, stated that the 1980 amendments were to be applied retroactively despite no evidence of legislative intent to that effect, then the Sterling rationale would apply. As it stands, the Texas Supreme Court's opinion does not rest on independent grounds but is, admittedly and on paper, an interpretation of the will of the Texas legislature.

In the event that this Court should find that the Texas Supreme Court acted independently of the will of the Texas legislature, Petitioner contends that is

even more reason for this Court to review this case because the decision of the Texas Supreme Court is in effect a determination of public policy and is contrary to both the letter and spirit of a myriad of decisions by this Court regarding the proper role of the judiciary in government. This Court has long held that courts should not act as manufacturers of public policy but rather as bodies which interpret already-existing public mandates. United States v. Sisson, 399 U.S. 267, 26 L.Ed.2d 608, 90 S.Ct. 2117 (1970) (Harlan, J., writing for the Court); American Trucking Assn. v. Smith, 495 U.S.___, 110 L.Ed. 2d. 148, 110 S.Ct.___ (1990) (Scalia, J., concurring).

3. The Texas Supreme Court's decision in Beck is in direct contravention to a long body of decisions from this Court which expressly hold that constitutional

amendments are not to be applied retroactively. American Federation of Labor v. American Sash and Door Co., 335 U.S. 538, 93 L Ed 222, 69 S.Ct. 258 (1949). In its holding in Beck, the Texas Supreme Court applied the 1980 Amendment to the Texas Constitution in a retroactive manner even though there is no evidence whatsoever to suggest that retroactive application was intended by the Texas legislature. Further, common sense would dictate that if there had been even the slightest hint of possible retroactive application of the 1980 Amendment, there would have been a great deal of controversy and debate over the matter because of the potential effects that such an interpretation would have over pre-existing marital property rights in the state. Neither Petitioner, nor obviously, the Texas Supreme Court, have been able to

locate any record of any such debates.

The Texas Supreme Court decision in this case is also in direct contravention with holdings of this Court which state that in matters of interpretation, Constitutional amendments are to be applied prospectively. City of San Antonio v. San Antonio Public Service Co., 255 U.S. 547, 65 L Ed 777, 41 S.Ct. 428 (1921); U.S. v. Donelly's Estate, 387 U.S. 286, 25 L Ed 2d 312, 90 S.Ct. 1033 (1970). The rule of retroactive interpretation, as enunciated by this Court has long been to the effect that if a constitutional amendment or statute is to be applied retroactively, there must be found an express intent on the part of the legislature for such effect. Again, there is no language in either the amendments or their history which would indicate that the Texas state legislature intended for

the 1980 Amendment to be retroactive.

The doctrine of implied validation represents an issue of first impression before this Court. Prior to the Texas Supreme Court judgment in this case, there were few jurisdictions which had considered the issue. Golden v. People ex. rel. Baker, 101 Colo. 381, 74 P.2d 715, 716 (Colo. 1937); Paluck v. Board of County Commissioners, 307 N.W.2d 853, 855 (N.D. 1981); Matthews v. Quinton, 362 P.2d 932, 938-39 (Alaska 1961). Because of the sensitive constitutional issues of the doctrine, both in the areas of impairment of contract as well as due process, Petitioner prays this Court to address implied validation directly.

4. The Texas Supreme Court's adoption of implied validation as a means of statutory interpretation presents a patent violation of the separation of powers

doctrine expounded upon and described by this Court since Marbury v. Madison, 1 Cranch 137, 2 L Ed 60 (1803). Simply stated, implied validation allows a court to read its own intentions into legislation which may or may not have been promulgated for the use the court may see for it. The doctrine of implied validation, as a means to impute retroactive effect to legislation which contains neither on its face nor in its history any reference to an intent by the legislature to make it retroactive, is in direct contravention to what this Court has construed to be the "judicial power" of Article III, §1, cl 1 of the United States Constitution. American Trucking Association v. Smith, 495 U.S. __, 110 L Ed 2d 148 110 S.Ct. __ (1990), (Scalia, J., concurring), Florida v. Wells, 495 U.S. __, 109 L Ed 2d 1, 110 S.Ct. 1632

(1990) (Stevens, J., concurring.)

This Court has long related to the judiciary of this nation the importance of maintaining an interpretive, rather than legislative, role in statutory construction, even where the judicial interpretation leads to a less harsh result. United States v. Locke, 471 U.S. 84, 85 L Ed 2d 64, 107 S.Ct. 1785 (1985) (J. Marshall, writing for the Court.) Much of the impetus behind the notion that a court is an interpreter, rather than creator, of statutory meaning lay in the admission that judicial forays into the legislative arena are inherently dangerous and can lead to disastrous results. In United States v. Sisson, 399 U.S. 267, 26 L Ed 2d 608, 90 S.Ct. 2117 (1970), the second Justice Harlan, writing for the court, noted:

"Were we to throw overboard the

> ballast provided by the statute's language and legislative history, we would cast ourselves adrift, blind to the risks of collision with other policies that are the buoys marking the safely navigable zone of our jurisdiction."
>
> 399 U.S. at 299.

Through the doctrine of implied validation, the Texas Supreme Court granted retroactive effect to the 1980 Amendments to the Texas Constitution. Quite frankly, there is nothing in either the language of the amendments or the history surrounding their passage, to indicate that the Texas legislature intended for the amendments to affect pre-1980 prenuptial agreements. Interestingly enough, the Texas Supreme Court opinion

contains what that Court purports to be language which would suggest that the legislature intended for the amendments to be retroactive; however, Petitioner has not been able to (1) verify the statement in the legislative record; (2) determine the identity of the person who made the statement; and (3) discover the context in which it was made.

Further, Texas and Federal Law has long admonished courts to not supply terms and conditions to statutes in the guise of interpretation. United States v. Yoshida International, 526 F.2d 560 (1975), Lenhard v. Butler, 745 S.W.2d 101 (Tex. App.-Fort Worth 1988, no writ.) In its decision, the Texas Supreme Court added the condition of retroactivity to the 1980 Amendments; such a condition does not exist either on the face of the amendments nor in the legislative history.

Petitioner is aware of Constitutional doctrine which precludes this Court from considering questions of Separation of Powers vis-a-vis state government. Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed. 2d 1311, 77 S.Ct. 1203 (1957), Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 66 L.Ed. 659, 101 S.Ct. 715 (1981). Petitioner is also aware of the basis for the doctrine but nonetheless asks this Court to revisit these decisions on the grounds that a violation of Separation of Powers is still a violation of constitutional rights which must be addressed, just as a violation of due process, equal protection, or anti-trust law would merit review by this Court. Because the Petitioner has exhausted all state remedies and this issue remains unsolved, this Court should determine whether the Texas Supreme Court did in

fact encroach upon the powers of the Texas legislature to the extent that the Petitioner's constitutional rights were violated.

CONCLUSION

The petition for a Writ of Certiorari should be granted and the judgment of the Texas Supreme Court should be reversed.

Respectfully submitted,

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December 6, 1991

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent via certified mail, return receipt requested to Ms. Stacy Johnson, P.O. Box 340, Sherman, TX 75091 on this the 7 day of December, 1991.

James M. Morris

JAMES M. MORRIS

Appendix A

1948 Amendment to Article XVI, § 15 of the Texas Constitution

"Section 15. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of the wife; and laws shall be passed more clearly defining the rights of the wife, in relation as well as to her separate property as that held in common with her husband; provided that husband and wife, without prejudice to pre-existing creditors, may from time to time by written instrument, as if the wife were feme sole, partition between themselves in severalty or into equal undivided interests all or any part of their existing community property, or exchange between

themselves the community interest of one spouse in any property for the community interest of the other spouse in other community property, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property of such spouse." (Emphasis added).

Appendix B

1980 Amendment to Article XVI, §15 of the Texas Constitution

"All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise, or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instruments from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interests of

one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; and the spouses may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned by one of them, or which thereafter might be acquired, shall be the separate property of that spouse; and if one spouse makes a gift of property to the other, that gift is presumed to include all the income or property which might arise from that gift of property." (Emphasis added).